IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 199 of 2007(S/B)

1. Hayat Singh Bisht aged about 52 years
S/o Sri Narayan Singh Bisht,
Presently posted as Assistant Engineer,
Kumaon Irrigation Division,
Almora, Uttarakhand.

2. Prabhat Kumar Asthana, aged about 51 years,
S/o Sri Ram Kumar Asthana,
Presently posted as Assistant Engineer,
Irrigation Division,
Uttarkashi, Uttarakhand …….. Petitioners

Versus

1. State of Uttarakhand through Secretary,
Irrigation Department, Uttarakhand,
Dehradun.

2. The Chief Engineer/Head of Department,
Irrigation Department, Uttarakhand,
Dehradun. …….. Respondents

…….

Sri U.K. Uniyal, Senior Counsel with Sri Shobhit Saharia, Advocate for the petitioners.
Sri J. P. Joshi, Chief Standing Counsel for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S.Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri U.K.Uniyal, Senior Counsel with Sri Shobhit Saharia, Advocate for the petitioners.
Sri J. P. Joshi, Chief Standing Counsel for the respondents.
They are heard on admission.

2. The petitioners have filed this writ petition for the following reliefs:

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to prepare a combined seniority list of Assistant Engineer of Irrigation Department as per the provisions of Uttarakhand Service of Engineers (Irrigation Department) Rules (Group-B), 2003 and Uttaranchal Government Servant Seniority Rules, 2002.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to act upon a "tentative" combined seniority list of Assistant Engineer for undertaking the exercise of promotions to the post of Executive Engineer.

(iii) Issue a writ, order, or direction in the nature of mandamus directing the respondents to consider the case of the petitioners also alongwith similarly situated Assistant Engineer of same recruitment year 1999-2000, for promotion to the post of Executive Engineer.

(iv) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) Award the cost of the writ petition to the petitioners."

3. The petitioners are seeking a writ of mandamus to the respondents to prepare a combined seniority list of Assistant Engineer of Irrigation Department as per the provisions of Uttarakhand Service of Engineers (Irrigation Department) Rules (Group-B), 2003 and Uttarakhand Government Servants Seniority Rules, 2002. The petitioners are further seeking a direction to the respondents not to act upon the tentative combined seniority list of Assistant Engineers for undertaking the exercise of promotions to the post of Executive Engineer. The petitioners have annexed seniority list dated 18.11.2006 (Annexure 6) with the writ petition. Petitioner no. 1 Hayat Singh Bisht is placed at serial no. 245 in this list, whereas petitioner no. 2 Prabhat Kumar Asthana is at serial no. 246.

4. Sri U.K. Uniyal, the learned Senior Counsel for the petitioners vehemently argued that the respondents cannot undertake the promotion exercise on the basis of the list (Annexure 6) as the same has not been prepared in accordance with the Rules.

5. In our opinion, the petitioners, without seeking quashing of the seniority list (Annexure 6), which according to the petitioners, is being acted upon by the respondents, cannot seek the reliefs sought in this writ petition.

6. For quashing of the seniority list (Annexure No. 6), the petitioners' remedy lies in filing an appropriate claim petition before the 'Public Services Tribunal'.

7. In view of the availability of alternative efficacious remedy to the petitioners of filing a claim petition before the 'Public Services Tribunal' we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in view of the decisions of this Court in the cases of **Bhuwan Chandra Pandey and others Vs. State of Uttaranchal and others** reported in **2006 (2) U.D. 439** and **Nanda Ballabh Pant Vs. State of Uttaranchal and others (W.P.No. 257 (S/B) 2005).**

8. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S.Rawat, J.) (**Rajeev Gupta, C.J.)**

07.08.2007 07.08.2007

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